

Delta Protection Commission  
Thursday, September 30, 1993

Final Minutes

**1. Call to Order/Roll Call.**

Acting Chairman McCarty called the meeting to order at Jean Harvie Community Center in Walnut Grove, Sacramento County, at 6:35 p.m.

Commissioners present: Barber, Calone, Curry, Ferreira, Johnson, McCarty, Mello, Potter, Salmon, Sekelsky, and Yates. Absent: Bland, Broddrick, Fargo, Keller, McGowan, Murphy, Thomson and Torlakson.

**2. Approval of August 1993 Minutes.**

Commissioner Ferreira asked for a correction to speaker James Coe's remark regarding flooding on Sherman Island. With this correction, on a motion by Commissioner Sekelsky and a second by Commissioner Curry, the draft minutes were approved unanimously.

**3. Chairman's Report.**

Chairman McCarty said the next meeting is scheduled for Thursday, October 28 at 6:30 p.m. at the Jean Harvie Community Center in Walnut Grove. A schedule through next April has been prepared and mailed to all the Commissioners and all those who receive Meeting Notices.

The Commission boat tour has been scheduled for Saturday, October 9, 1993. The boat will leave from the Port of Stockton at 10:30 a.m. Please allow about 5 hours for the trip; lunch will be provided. Members of the public will be allowed to participate as space allows.

Upcoming events in the Delta include: the Brannan Island Park Clean-up Day on Saturday, October 2, followed by a barbecue. The tenth Annual Rio Vista Bass Festival and Derby will be on Sunday October 10th in Rio Vista. As a part of the 30th anniversary of the Port of Sacramento in West Sacramento, the sternwheeler Elizabeth Louise will paddle to and from the Port along Steamboat Slough on October 14th and 18th. The Port festivities are October 15th - 17th. The North Delta Conservancy is sponsoring a tax incentives and estate planning seminar on Friday, October 22, 1993, 9:00 am to 1:00 pm at the Jean Harvie Community Center.

The following subcommittees meeting have been scheduled for the next month:

\* Legislative:

Friday, October 15, 10:00 am  
DPC Office, Walnut Grove.

- \* Citizens Advisory Committee:  
Tuesday, October 19, 9:00-11:00 am  
Jean Harvie CC, Walnut Grove
- \* Budget and Finance:  
Monday, November 1, 4:00 pm  
McCarty Company Office, Stockton

Reporting on the last meeting of the Subcommittee on Budget and Finance, Commissioner McCarty reported that the Commission's special fund had zero funds and that the Legislature had placed the special fund on a list of funds to be "raided" to help balance the budget. The Subcommittee directed staff to request an accounting to determine if funds are going in the account or not.

Staff presented more information on a Delta environmental license plate. It appears that very little revenue would be generated before January 1997. Staff will continue to work on the program.

Staff reported that assistance has been requested from Resources Agency and Senator Johnston's office to find funding for the 1994-95 fiscal year.

The Subcommittee discussed pros and cons of a non-profit partner and the Subcommittee is not prepared to recommend creation of a non-profit at this time.

The Subcommittee also discussed fees for appeals; that matter will be discussed later in the agenda.

Staff described a \$1,900 dollar donation from the Friends of the Estuary for public information. The Subcommittee looked at a mock-up of an informational brochure and recommended that staff pursue that concept and then bring the matter to the full Commission for review.

#### **4. Executive Director's Report.**

Ms Aramburu reported that forms have been mailed to the general mailing list to update the list.

She said staff is waiting to mail information for travel expense claims until after office equipment arrives. If any Commissioners would like to proceed with submittal now, please call at the office.

The office equipment has been ordered, but the checks have not yet arrived from Santa Fe.

## **5. Attorney General's Report.**

Rick Frank reported that the Conflict of Interest Regulations had been submitted to the Fair Political Practices Commission for review.

Regarding Commissioners that already file a conflict of interest form, the FPPC has an "expanded form" procedure which can be used to simultaneously meet requirements of all agencies. Staff will provide assistance with this expanded form when the April 1, 1994 deadline for joint submittals.

Mr. Frank also stated that there are new regulations (2 C.R.R. Sections 18703.2 and 18703.3) which apply to reclamation district representatives and clarify that board members selected on the basis of reclamation district responsibilities are not to be disqualified from full participation on the Commission. Mr. Frank said he believes that this new regulations support his earlier advice that reclamation district representatives can fully participate and vote on the Delta plan. He said that his opinion does not protect the Commissioners from legal challenges on the issue, and that he could request an advice letter from the FPPC that would do so.

Commissioner Mello moved, seconded by Commissioner Ferreira, to direct staff to request an advice letter from the FPPC. The motion passed unanimously.

Mr. Frank reported that the official map of the Delta has been located in the Secretary of State's office at 1230 J Street, Suite 300 Sacramento.

## **6. Informational Briefing: Long Term Management Strategy (LTMS).**

Steve Goldbeck, staff member to the San Francisco Bay Conservation and Development Commission, outlined the LTMS program. He said that 8 to 12 million cubic yards a year are dredged from San Francisco Bay, with 4 million cubic yards a year deposited at the Alcatraz disposal site. The site has not allowed dispersal, as originally thought, resulting in a large mound. Because of environmental concerns regulatory agencies have not been able to designate a new in-Bay disposal site.

The lack of a solution resulted in the LTMS program to research alternative solutions. BCDC, the Corps of Engineers, the Regional Water Quality Control Board, and the EPA participate in the program with the input of over 40 interested agencies and groups. The program includes a needs assessment, alternative methods of disposal, and a range of alternative solutions. He said the budget is 16 million dollars.

A deep-water ocean disposal site is close to being approved by the EPA. The RWQCB is reviewing in-Bay disposal sites. BCDC is studying upland disposal and reuse alternatives. They have looked at 80 sites, included sites in the Delta where dredged materials could be used for levee repair. Department of Water Resources believes 50 million cubic yards of material are needed to repair levees in the next few years. Other upland uses include cover for sanitary landfills and wetland restoration.

However, concerns have been raised about the potential impacts of salt and other contaminants in dredged material on Delta water quality. Pilot programs have included study of possible impacts. Department of Water Resources and the Corps have been monitoring two pilot projects on Sherman Island and on Twitchell Island and have not yet reported any significant impacts. BCDC will be working with DWR and the Central Valley Regional Water Quality Control Board to conduct a further pilot test to measure potential for impacts to Delta. Mr. Goldbeck said that if the salinity and other issues can be resolved, there is a good match of the need for materials for levee repair in the Delta and the need to dispose of large amounts of dredged material from the Estuary.

Commissioner Mello asked about the test projects; Mr. Goldbeck said the first project dredged material was placed directly on the site and the second project included an additional step where the spoils were located in another location first, left for a year, and then placed on the levee. Mr. Goldbeck added that there are two possible sites for processing the dredged material; one in the North Bay and one in Suisun Marsh.

Commissioner Potter asked how "hot" sediments are identified; Mr. Goldbeck said there is rigorous testing required. Mr. Potter also asked about sampling and testing before and after dredging; Mr. Goldbeck responded that materials are sampled and the bottom is surveyed before and after dredging to ensure that the authorized amount of material is removed.

Commissioner Curry asked if other than permitting, any agency stays involved; Mr. Goldbeck responded that all the agencies are involved, but particularly the Corps, RWQCB and BCDC.

**7. Possible Adoption of Regulations Regarding appeals of Local Actions to the Commission.**

This was a matter continued from the Commission's August 1993 meeting.

Richard Frank, Deputy Attorney General, distributed and discussed a revised draft of the regulations which incorporates changes suggested by Commissioners and public at the August meeting.

Mr. Frank recounted that the public hearing had been opened and closed at the last meeting. At the last meeting, two issues were raised by the Commission. First, there were questions about the issue of ex parte communication. He stated that it is necessary for Commissioners to publicly disclose ex parte communication prior to votes on particular matters. He said this advice is based on advice previously given by the Attorney General's office including an advice letter addressed to former Assemblymember Dan Hauser. Mr. Frank indicated that proposed Section 14 tracks current law. However, Mr. Frank continued, it is a policy matter whether or not the language is included in the appeals regulations. Mr. Frank suggested that the section clarifies the Commission's responsibilities to the members and to the public.

Ms Aramburu spoke to the issue of appeal fees. She referred to a memo handed out at the meeting which states that other Commissions with appeal jurisdiction do not require fees. Legislation has just passed to require the Coastal Commission to review appeals. If they are frivolous, the Coastal Commission then can recover a fee. Ms Aramburu stated that the Budget and Finance Committee had recommended a fee based on estimated costs in staff time and meant solely to offset those costs. She recommended that the Commission reopen the public hearing at the next meeting to allow public comment on the appeal fee issue, or proceed with adoption of the regulations without the appeal fee and ask staff to report to the Commission with details of staff time required to analyze appeals. Mr. Frank added that the fees collected may be required to go directly to the General Fund under existing law.

Commissioner Potter suggested that the Commission adopt the regulations, as submitted, and revisit the issue of a fee at a later date. There were no other Commission comments.

On a motion by Commissioner Mello and a second by Commissioner Keller, the motion was approved by voice vote of 12-0-0.

Chairman McCarty directed staff to schedule the appeal fee issue for further Commission discussion. Commissioner Potter said he liked the idea because it would protect the Commission from frivolous appeals, but felt a fee of \$300 to \$500 would be adequate.

Commissioner Sekelsky said he agreed with the \$1,500 fee.

Chairman McCarty said the fee was intended to reimburse staff costs only, or could be a threshold fee to ensure that the appeal process is not abused. He also asked staff to review the option of the Executive Director reviewing the appeal first, as in the Coastal Commission model.

Commissioner Keller said the fees should be tied to the

Commission's actual cost, and attempts to recover the cost and should not be used to encourage or discourage appeals.

Commissioner Potter asked staff to report on if the money could be retained by the Commission or not. Mr. Frank said if the fee was larger than the actual costs, the excess would likely have to go to the General Fund.

#### **8. Public Hearing and Possible Adoption of Planning Program.**

The Board reviewed the staff report entitled "Proposed Planning Procedures and Outline for Preparation of Delta Land Use and Resource Management Plan". The report outlines the process proposed to use to develop the plan for the Delta area. Working closely with the Citizens Advisory Committees (CAC), other members of the public, and the planning departments of the five counties staff will prepare a set of background reports for Commission consideration. The report has a deadline of July 1, as set out in SB 1866. Ms Aramburu suggested Commission consideration of the Environment report be postponed until December and the Development and Utilities/Facilities reports be heard at the same meeting in January.

Chairman McCarty opened the public hearing.

Dr. Frank Ernst stated that the planning program includes no mention of health considerations. He said that flooding results in mosquitoes, which are disease vectors. As a medical doctor, he said he is concerned with keeping health concerns in focus. He suggested addition of a section to address health issues.

Greg Zlotnick, staff to the Bay Delta Oversight Council, said that group is in mid-process for evaluating Delta water issues. He said they have completed background reports on water quality, water supply, biology and levees. He said the BDOC reports are briefing papers, plus comments by technical experts. He offered to brief the Commission or any member of the Commission on the program.

Chairman McCarty closed the public hearing. Mr. Potter suggested that staff include information on vector control in the background reports described in the staff report, and with that changed moved adoption of the planning program, seconded by Commissioner Johnson. The Commission approved the planning program on a vote of 12-0-0.

#### **9. Public Hearing and Possible Adoption of Mission Statement for Citizens Advisory Committees (CAC).**

Ms Aramburu recounted to the Commission that two months ago the Commission asked staff to prepare a mission statement and have it reviewed by the Subcommittee on Administration and Operations. In addition, the Commission directed staff to add others to the

CAC's and asked for a brief bio on each CAC member. To that end, several people have been added to the CACs and bios have been obtained from most. Ms Aramburu is eager to schedule the meetings and start the CAC meetings after the Commissions approval of the revised lists and mission statement.

Ms Aramburu said the Mission Statement defines the CACs' role as advisory, not decision-making. The decision-making responsibilities lie with the Commission.

Ms Aramburu said she had received thoughtful comments from the members of the Administration and Operations Subcommittee regarding the language describing the intent of the planning program. She decided not to change the language of the section entitled "Requirements of the Plan" since it is quoted from the legislation, but added language to clarify that the language is quoted. She said the Commissioner comments point out the need to have the CACs review the language in the Act and add any nuances or additional topics desired.

Chairman McCarty opened public hearing. There were no speakers and Chairman McCarty closed public hearing. On a motion by Commissioner Barber, seconded by Commissioner Ferreira, the Commission adopted the Mission Statement and revised CAC lists on a vote of 12-0-0.

**10. Staff Briefing and Request for Commission Guidance Regarding Procedures to Ensure Compliance with California Environmental Quality Act.**

Richard Frank, Deputy Attorney General, reported that there are three actions of the Commission that trigger review under CEQA: adoption of the Delta plan; review of the five County General Plan amendments to implement the plan; and administrative appeals.

Regarding the adoption of the plan and the review of the five County plans, there are three options: conventional preparation of an environmental document; pursuing statutory exemption from the CEQA by the Legislature; or petitioning the Secretary for Resources for certification of the Commission's programs to designate as functionally equivalent to CEQA. Mr. Frank said there are precedents for this approach including the San Francisco Bay Conservation and Development Commission and the Coastal Commission.

Regarding administrative appeals, Mr. Frank recommends the Commission rely on conventional review under CEQA, which would mean reliance on the environmental document prepared by the lead agency, probably the County.

Commissioner Barber moved, seconded by Commissioner Keller, to direct staff to pursue certification of the Commission's program with the Secretary for Resources and to rely on conventional review

under CEQA for appeals. The Commission voted unanimously to so direct staff.

Mr. Frank said he will pursue the Commission's directions with the Secretary for Resources.

**11. Public Comments.**

Dr. Frank Ernst read a statement (see attached).

**12. Commissioner Comments and Announcements.**

Commissioner Potter stated that the Land Use Study of the Delta, required by SB 443, will be ready for release in about one month. The study will compare land use in the Delta in 1976, 1991 and 1993.

**13. Adjournment.**

On a motion by Commissioner Barber and a second by Commissioner Mello, the meeting was adjourned at 8:30 p.m.



To: Chairman and members,  
Delta Protection Commission

FOR THE RECORD

Comments from the public:

Ernst report #10 to the Delta Protection Commission

September 30, 1993

Sirs:

This Commission was crafted to perform a job for the social termites. A termite eats, cannibalizes the structure it lives in. This Commission was devised to violate the provisions of a government structure of the people, by and for the people.

TO PAINT IN BROAD STROKES: SOVEREIGNTY, JURISDICTIONS, PROPERTY LINES

- 1) NAFTA calls for a simple congressional majority vote to establish a bureaucracy of appointees to manage trade, employment practices, and governance ACROSS the lines of sovereign nations. For example, some new form of court system would be called for. This would be no different than what EEC in Europe is attempting to do.
- 2) NOW federal Office of Management and Budget (OMB) manages, manipulates governance across the boundaries of sovereign states. In California OMB works primarily through the Governor's Office of Planning and Research (OPR) and Calif Dept Education.
- 3) This Commission was craftily drafted to manage county and city affairs across jurisdictional lines from which 13 of its members would initially be appointees. A jurisdictional line defines two elements - 1) an area of sovereignty for those living in it and 2) an aspect of their governance.

NO ELECTIONS PERMITTED OR ALLOWED

The problem for Constitutional government resulting from the destruction of these jurisdictional elements is that electors no longer have an accountable, responsible governance which they can vote on.

You appointees here have basically been drafted to attempt the takeover of policy making from those elected within finite jurisdictions who have been doing that with some form of voter ratification. POLICYMAKING IS WHAT PLANNING IS, especially the kind envisaged by the termites. HERE: No voter ratification process for actions.

This body was primarily established to take over jurisdictional authority from elected, to subvert them. You would define the private use of private property lying within an, as yet not lawfully defined, territory. The Army Corps of Engineers was clear that this body was in the business of regulating land use last April in their presentation to this Commission. You remember, that was the clearly announced "FRAUD!" meeting.

You members come here, are listed mostly for your presence, counted toward a total required for a "policymaking body quorum". For purposes of the termites all that is required is that your body be listed as present, that you show up and be counted as physically present toward that "quorum". No "official" actions supposedly can take place without that. Therefore, just by your presence here, you are participating in the destruction of both California and Federal Constitutional governance.

Eight local government appointees and 4 of 5 of the water district members here were elected by voters of finite jurisdictions to represent them for specified purposes within those boundaries. Only the Governor's six appointees were selected for purposes of this takeover of controls of private property use. Not one of the local elected here can claim this policymaking authority in his elected job specifications.

The your job assignment is to subvert local officials, take over the policymaking for the private land in this territory. The job you will leave for local elected officials will be to enforce and police your virtually unappealable dictates and edicts.

REGIONAL GOVERNMENT: The elected become the police force of the appointees.

YOU APPOINTEES WILL HAVE THE AUTHORITY AND THE ELECTED WILL HAVE THE RESPONSIBILITY!  
Respectfully,

Franklin H Ernst Jr

